IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No. 1353 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PADMABEN KAMLESHBHAI LAKHANI

Versus

KAMLESH DEVANDAS LAKHANI

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Appearance :

MS SAHEEN QURESHI FOR MR MM TIRMIZI for Applicant
MR RJ GOSWAMI for Opponent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 29/09/2005

ORAL JUDGMENT

1 Heard learned Advocate Ms. Saheen Qureshi on behalf of learned Advocate Mr. M.M. Tirmizi for the applicant while learned Advocate Mr. R.J. Goswami for the opponent is not present for the hearing.

2 This application is preferred under Section 24 of the Civil Procedure Code to transfer Hindu Marriage Petition No. 305 of 2005 filed by the present opponent husband of the applicant in the Family Court at Ahmedabad under Section 13 of the Hindu Marriage Act for divorce.

3 Short facts disclose that marriage between the parties took place on 26th of January, 2000 and out of that wedlock, a girl child was born, which is minor at present. Married life of the applicant was in doldrums and ultimately according to allegation she was driven out of the matrimonial home. The applicant had to reside with her parents at Dahod thereafter. She preferred an application for maintenance under Section 125 of the Criminal Procedure Code, which was contested by the opponent and proceedings ultimately culminated upto the High Court and concluded in favour of the present applicant. It is submitted that the applicant is entitled to maintenance, but till today, the husband opponent has not paid anything towards maintenance to

the wife and minor child. Husband - opponent preferred one Hindu Marriage Petition being Hindu Marriage Petition No. 80 of 2003 in the Family Court at Ahmedabad against the present applicant which came to be transferred to Dahod, vide order passed by this Court on 25th of October, 2004, in Misc. Civil Application No. 1981 of 2003. The said Hindu Marriage Petition was filed by the husband – opponent for the restitution of conjugal rights. On transfer, the said HMP No. 80 of 2003 was re-numbered at Dahod as HMP No. 64 of 2004 which is pending in the court of learned Civil Judge (SD), Dahod. However, thereafter also the husband – opponent preferred Hindu Marriage Petition No. 305 of 2005 in the Family Court at Ahmedabad, which is sought to be transferred at Dahod where earlier transferred Hindu Marriage Petition, as aforesaid, is pending.

4 From the submissions made and from the record which is available with this Court, it appears that there are mainly two grounds on which the transfer is sought. Firstly, inconvenience of wife

to attend Hindu Marriage Petition No. 305 of 2005 at Ahmedabad, and secondly, as per Section 21(A) of the Hindu Marriage Act, to avoid conflicting decisions in earlier Hindu Marriage Petition and Hindu Marriage Petition No. 305 of 2005, both Hindu Marriage Petitions are required to be heard together and, therefore, the transfer of Hindu Marriage Petition No. 305 of 2005 from the Family Court at Ahmedabad to the Court of Civil Judge (SD) at Dahod is necessary.

5 It is submitted that at one hand the wife is not paid any amount towards the maintenance and the circumstances of the wife is such as she cannot spend huge amount to attend the Hindu Marriage Petition at Family Court at Ahmedabad on each date. It is stated that she has minor daughter aged about 4 years. Her parents with whom the applicant resides presently are aged and they are unable to take care of the minor daughter of four years. Therefore, it is submitted that it would be extremely difficult and almost impossible for the wife to go at Ahmedabad and attend the Hindu Marriage Petition No. 305 of 2005. The

distance between Ahmedabad and Dahod is about 214 kms and that the wife will have to travel all through out all alone to and fro which is also difficult for her. Secondly, it transpires from the record that, earlier also considering the hardships of the wife, the Hindu Marriage Petition No. 80 of 2003 filed by the husband was transferred vide order of this Court delivered on 25th of October, 2004, from Family Court at Ahmedabad to Civil Judge (SD), Dahod. The said Hindu Marriage Petition was filed by the opponent for restitution of conjugal rights and now the husband has filed Hindu Marriage Petition No. 305 of 2005 for getting divorce under Section-13 of the Hindu Marriage Act. Though strictly speaking when both the applications are preferred by the husband, the facts of the case may not fall within the scope of Section 21(A) of the Hindu Marriage Act, but at the same time, it is necessary that the object of Section 21(A) be complied with in letter and spirit. It is absolutely necessary that the petition for restitution of conjugal rights filed by the opponent and as transferred by this Court to Civil Judge (SD),

Dahod and re-numbered as Hindu Marriage Petition No. 64 of 2005, is required to be heard together with the present Hindu Marriage Petition No. 305 of 2005, which is filed for the divorce, or else, there is possibility of conflicting decisions.

6 Thus, having regard to practical hardships and difficulties on the part of the applicant wife as well as to comply with the spirit and object of Section 21(A) of the Hindu Marriage Act, in the interest of justice, this application deserves to be allowed.

7 In the result, this application is allowed and it is directed that the Hindu Marriage Petition No. 305 of 2005 pending before the Family Court at Ahmedabad stands transferred to the Court of Civil Judge (SD) at Dahod, where the Hindu Marriage Petition No. 64 of 2004 is pending. Learned Principal Judge, Family Court at Ahmedabad, is directed to transmit the Record and Proceedings of the Hindu Marriage Petition No. 305 of 2005 to the Court of

learned Civil Judge (SD) at Dahod forthwith through the District Judge, Dahod. On receiving the Record and Proceedings of Hindu Marriage Petition No. 305 of 2005 the same shall be re-numbered and shall be decided and disposed of according to law by the learned Civil Judge (SD), Dahod, where Hindu Marriage Petition No. 64 of 2004 is pending. Rule made absolute. DS permitted.

(J.R.VORA, J.)

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